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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6957 OF 2006

Sau.Mahadevi Gurlingappa Mangoli Petitioner
versus
Irappa Dhanappa Kalyanshetti Respondent

Mr.S.G.Deshmukh for petitioner.
Mr.N.J.Patil for respondent.

CORAM : A.S.OKA, J.

DATE : 26th February 2007

PC :

1. By this writ petition under Article 227 of the Constitution of India, the learned Trial Judge has rejected the application at Exhibit-36 made by the petitioner. The application at Exhibit-36 was made for a prayer to try certain issues as preliminary issues. The learned counsel for the petitioner relied upon a decision of Gauhati High Court reported in AIR-2000-Gauhati-117 (Krishnapada Roy @ Saha and another Vs. Parimal Chandra Saha & another) and submitted that the issue relating to the right of pre-emption claimed by the respondent-plaintiff ought to have been decided as a preliminary

MST

issue.

2. I have perused the impugned order. The learned Trial Judge has considered the application made by the petitioner and has come to the conclusion that for decision of the said issues evidence will have to be lead and that is the reason why the learned Trial Judge has passed a discretionary order by which he has declined to try certain issues as preliminary issues. There is no failure of justice. No case is made out for interference. Petition is rejected.

(A.S.OKA, J.)